

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WATERWORKS PLUMBING & BACKFLOW, INC.;**  
**COMFORTWORKS HEATING & COOLING, INC.,**  
**Single Employer; DGR OF WNY, INC. d/b/a THE PLUMBER**  
**and 72 DEGREES, Alter Ego/Single Employer**

**and**

**JOEL B. TUCCIARONE, an Individual**

**Cases 03-CA-027665  
03-CA-064979**

**and**

**UNITED ASSOCIATION, PLUMBERS &  
STEAMFITTERS LOCAL UNION NO. 22**

**SUPPLEMENTAL ORDER**

On May 14, 2012, the Board issued its Decision and Order in the above cases, directing Waterworks Plumbing & Backflow, Inc. ("Respondent Waterworks") to, inter alia, make bargaining unit employees and benefit funds whole for any losses they have suffered as a result of Respondent Waterworks' unfair labor practices in violation of Section 8(a)(5) of the National Labor Relations Act.

On September 25, 2012, the United States Court of Appeals for the Second Circuit entered its judgment in Civil No. 12-2132, enforcing in full the Board's Order.

Thereafter, the Region issued a Compliance Specification and Notice of Hearing on July 31, 2013, alleging that Respondent Waterworks, along with other named Respondents, Comfortworks Heating & Cooling, Inc. (Single Employer), DGR of WNY, Inc., d/b/a The Plumber and 72 Degrees (Single Employer/Alter Ego), and Joel B. Tucciarone (collectively referred to as "Respondents"), are obligated to pay backpay and fund contributions totaling \$897,841.30, plus interest. The Respondents filed answers to the Compliance Specification.

Following issuance of the Compliance Specification, the parties reached an agreement on a written Stipulation Consenting to Amount of Backpay, Schedule for Payment, and the Entry of a Supplemental Board Order and Consent Judgment ("Stipulation") providing for the payment by Respondent Waterworks of \$75,000 pursuant to an installment payment schedule as full compliance with the Board's

enforced Decision and Order. The Stipulation specifically provides that all parties waive the filing of an answer to the Compliance Specification, hearing, Administrative Law Judge's Decision, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact and conclusions of law by the Board, and all further proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

The Stipulation also provides that the Stipulation, together with the Board's May 14, 2012 Decision and Order, the September 25, 2012 judgment of the United States Court of Appeals for the Second Circuit enforcing the Board's Decision and Order, and the Compliance Specification and Notice of Hearing, constitute the entire record herein.

The Stipulation further provides for submission of the Stipulation to the Board for its approval and the issuance of a Supplement Order.

Pursuant to the Stipulation, if Respondent Waterworks does not comply with the terms of the Stipulation, and fails to cure the non-compliance within 14 days' notice of such non-compliance, the Regional Director may without further notice reissue the Compliance Specification previously issued, and file a motion for default judgment with the Board on the allegations of the Compliance Specification, and the Board may issue a Second Supplemental Order finding the allegations of the Compliance Specification to be admitted, and requiring all Respondents, jointly and severally, to fully remedy the violations found by, among other things, paying \$897,841.30, plus interest, to the named employees and benefit funds. The United States Court of Appeals for any appropriate circuit, upon application by the Board, may enter a judgment enforcing the Second Supplemental Order. The only issue that may be raised before the Board and the Court of Appeals is whether Respondent Waterworks defaulted under the terms of the Stipulation.

The Stipulation is approved and made a part of the record herein, and the proceeding is transferred to and continued before the Board in Washington, D.C. for the entry of a Supplemental Order pursuant to the provisions of the Stipulation.

Upon the basis of the Stipulation and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board makes the following:

## **ORDER**

Respondent Waterworks Plumbing & Backflow, Inc., its officers, agents, successors, and assigns, shall take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

Within 14 days of the date of this Order, pay the initial installment payment of \$5,000, plus Respondent's share of Federal Insurance Contributions Act (FICA) on wages totaling \$1,591.66 (which is the backpay portion of the \$5,000 installment). The Respondent shall pay the FICA rate in effect at the time installment payments are made. Thereafter, for the following 28 months, on the 20th day of each month, pay an installment payment of \$2,500, plus Respondent's share of FICA on wages totaling \$795.83 (which is the backpay portion of the \$2,500 installment), until the entire settlement amount of \$75,000.00 has been paid. Monthly installments may be prepaid. Increments paid over and above the monthly installment amount shall be applied to the entire settlement amount which may, depending on the amount of the overage, reduce the number of monthly installments.

On or before each monthly installment payment due date, Respondent shall mail or deliver to Region Three, to the attention of the Compliance Officer, a check made payable to the National Labor Relations Board. The National Labor Relations Board will deposit the check into an escrow account. The Regional Director for Region Three shall, in the Regional Director's sole discretion, determine the prorated amount of backpay to be distributed to the employees named in the Compliance Specification and to the benefit funds.

Dated, Washington, D.C., September 12, 2014

By direction of the Board:

Gary Shinnars  
Executive Secretary